

## **FACTSHEET**

**TITLE:** Letter of Appeal filed by Cindy J. Swanson, appealing the Planning Commission action **denying** SPECIAL PERMIT NO. 05032, requested by Cynthia Swanson, for authority to expand a non-conforming use to allow an outdoor beer garden on property located at The Library Lounge at 6891 A Street, Suite 200.

**STAFF RECOMMENDATION:** Conditional approval.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 07/06/05  
Administrative Action: 07/06/05

**RECOMMENDATION:** **Denial** (5-0: Sunderman, Larson, Krieser, Carlson and Pearson voting 'yes'; Carroll, Taylor and Bills-Strand voting 'no').

### **FINDINGS OF FACT:**

1. The purpose of this proposed special permit is to expand a nonconforming use to allow a beer garden at The Library Lounge at 6891 A Street.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.8-9, concluding that the use has been at this location for many years, and the nonconforming condition caused by access doors not meeting the required separation for a conditional use in the B-2 District is not made worse by this request. If approved, one of the nonconforming doors will be surrounded by the proposed beer garden fence, and the applicant states the lounge will expand into an adjacent bay which has an east-facing door that opens to the interior of the shopping center.
3. The additional information submitted by the staff at the public hearing, including an additional Condition #2.1.2, in response to comments by the Health Department, is found on p.25-28. The added condition requires that "No outside sound amplification equipment, musical instruments, radios, TV sets (except where sound is mute), or similar devices be permitted in the beer garden."
4. The applicant's testimony is found on p.12, wherein the applicant stated that she is seeking this special permit to allow her smoking patrons to take their drinks outdoors; otherwise, she will not be able to remain in business. The applicant also stated that the owner/landlord will not agree to have the beer garden located on the east side of the Lounge.
5. Testimony in opposition is found on p.12-13, and the record consists of two letters in opposition and a petition bearing nine signatures in opposition (p.29-34). The additional information and photographs submitted by the opposition and referred to in the testimony are found on p.35-37. The issues of the opposition are quality of life issues for the neighboring residents.
6. The applicant's response to the opposition is found on p.14.
7. On July 6, 2005, the Planning Commission disagreed with the staff recommendation and voted 5-0 to **deny** the proposed special permit (Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman and Taylor absent). See Minutes, p.14. The proposed resolution which was denied by the Planning Commission is found on p.4-6.
8. On July 6, 2005, a letter of appeal was filed by Cindy J. Swanson (p.2).

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** July 11, 2005

**REVIEWED BY:** \_\_\_\_\_

**DATE:** July 11, 2005

**REFERENCE NUMBER:** FS\CC\2005\SP.05032 Appeal

7-6-05

I would like to appeal the Planning  
Commission decision in regard to  
Special Permit No. 05032.

Cindy J. Swanson  
1840 Rusty Lane  
Lincoln

402-450-6850

CITY CLERK'S OFFICE


2005 JUL 6 PM 2 24

CITY OF LINCOLN  
NEBRASKA

7-6-05

**PLANNING COMMISSION FINAL ACTION  
NOTIFICATION**

**TO :** Mayor Coleen Seng  
Lincoln City Council

**FROM :** Jean Walker, Planning 

**DATE :** July 7, 2005

**RE :** **Special Permit No. 05032 - DENIED**  
(Expansion of nonconforming use to allow an outdoor beer garden at the Library Lounge, 6891 A Street)

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, July 6, 2005:

Motion made by Carlson, seconded by Larson to **deny Special Permit No. 05032**, requested by Cynthia Swanson, for authority to expand a non-conforming use to allow an outdoor beer garden on property located at The Library Lounge at 6891 A Street, Suite 200. Motion to **deny** carried 5-0 (Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman and Taylor absent).

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

On July 6, 2005, the applicant filed a letter of appeal with the City Clerk. The public hearing before the City Council is tentatively scheduled for Monday, July 25, 2005, at 5:30 p.m.

**Attachment**

cc: Building & Safety  
Rick Peo, City Attorney  
Public Works  
Cynthia Swanson, 1840 Rusty Lane, 68506  
MB Caffry, 12835 Jones Street, Omaha, NE 68154  
Richard and Eloise Agee, 2541 Woodleigh Lane, 68512  
Gary Walsh, Health Department  
Jerry E. and Connie J. Barnett, 6820 Rexford Drive, 68506  
Vic Cottrell, 1412 Kingston Road, 68506  
Paul Berggren, 7420 Lambert Place, 68516  
Norman Otto, 1500 Kingston Road, 68506  
Jim Otto, 6903 Rexford Drive, 68506

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RESOLUTION NO. PC-\_\_\_\_\_

**DENIED by Planning Commission, 5-0,  
July 6, 2005**

SPECIAL PERMIT NO. 05032

1           WHEREAS, Cynthia Swanson has submitted an application designated as  
2   Special Permit No. 05032 for expansion of a non-conforming use to allow an outdoor  
3   beer garden on property located at The Library Lounge at 6891 A Street, Suite 200, and  
4   legally described as follows:

5           Lot 4, except the north 190 feet of the east 190 feet thereof,  
6           Block 1, Huntington First Addition, Lincoln, Lancaster  
7           County, Nebraska;

8           WHEREAS, the Lincoln City-Lancaster County Planning Commission has  
9   held a public hearing on said application; and

10          WHEREAS, the community as a whole, the surrounding neighborhood,  
11   and the real property adjacent to the area included within the site plan for this expansion  
12   of a liquor license for an outdoor beer garden will not be adversely affected by granting  
13   such a permit; and

14          WHEREAS, said site plan together with the terms and conditions  
15   hereinafter set forth are consistent with the comprehensive plan of the City of Lincoln  
16   and with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the  
17   public health, safety, and general welfare.

1                   NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster  
2 County Planning Commission of Lincoln, Nebraska:

3                   That the application of Cynthia Swanson, hereinafter referred to as  
4 "Permittee", to expand a non-conforming use to allow an outdoor beer garden be and  
5 the same is hereby granted under the provisions of Section 27.63.280 of the Lincoln  
6 Municipal Code upon condition that outdoor beer garden be in strict compliance with  
7 said application, the site plan, and the following additional express terms, conditions,  
8 and requirements:

9                   1.     This permit approves the expansion of the area designated for the sale of  
10 alcohol for consumption on the premises as shown on the site plan.

11                  2.     Before receiving building permits:

12                   a.     The Permittee shall submit to the Planning Department for review  
13 and approval five copies of the revised site plan showing a  
14 reduction of the dimensions of the outdoor beer garden to the  
15 satisfaction of Public Works and Utilities, with the beer garden  
16 remaining centered along the south wall of the existing building.

17                   b.     The construction plans must comply with the approved plans.

18                  3.     Before the sale of alcohol for consumption on the premises, all  
19 development and construction must comply with the approved plans.

20                  4.     The site plan approved by this permit shall be the basis for all  
21 interpretations of setbacks, yards, locations of buildings, location of parking and  
22 circulation elements, and similar matters.

23                  5.     This resolution's terms, conditions, and requirements bind and obligate the  
24 Permittee, its successors and assigns.

1           6.     The applicant shall sign and return the letter of acceptance to the City  
2 Clerk within 30 days following the approval of the special permit, provided, however,  
3 said 30-day period may be extended up to six months by administrative amendment.  
4 The clerk shall file a copy of the resolution approving the special permit and the letter of  
5 acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the  
6 applicant.

7                     The foregoing Resolution was approved by the Lincoln City-Lancaster  
8 County Planning Commission on this \_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

DENIED by Planning Commission, 5-0 (Larson,  
Carroll, Carlson, Esseks and Bills-Strand  
voting 'yes'; Krieser, Pearson, Sunderman and  
Taylor absent). July 6, 2005

Approved as to Form & Legality:

  
\_\_\_\_\_  
Chief Assistant City Attorney

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for July 7, 2005 PLANNING COMMISSION MEETING

**P.A.S.:** Special Permit #05032

**PROPOSAL:** A request for a special permit to expand a nonconforming use to increase the area where the sale of alcoholic beverages for consumption on the premises is allowed for the Library Lounge.

**CONCLUSION:** The use has been at this location for many years, and the nonconforming condition caused by access doors not meeting the required separation for a conditional use in the B-2 is not made worse by this request. If approved, one of the nonconforming doors will be surrounded by the proposed beer garden fence, and the applicant states the lounge will expand into an adjacent bay which has an east-facing door that opens to the interior of the shopping center.

<b>RECOMMENDATION:</b>	Conditional Approval
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### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** See attached ownership certificate.

**LOCATION:** 6891 A Street, Suite 200

**EXISTING ZONING:** B-2 Planned Neighborhood Business

**EXISTING LAND USE:** Commercial

### **SURROUNDING LAND USE AND ZONING:**

North:	Commercial	B-2
South:	Commercial	B-2
East:	Commercial	B-2
West:	Two-family Residential	R-4

### **HISTORY:**

**May 30, 1995** - Pre-existing Use Permit #22D was approved granting authority to construct additional drive-through lanes for the bank at the northeast corner of the site.

**March 31, 1993** - Pre-existing Use Permit #22C to allow a pole sign for the bank was withdrawn.

**April 17, 1989** - Pre-existing Use Permit #22B was approved granting authority to expand the Dairy Queen and add a drive-through facility.

**December 12, 1988** - Pre-existing Use Permit #22A was approved granting authority to construct additional ground signs for Vistar Bank.

**August 31, 1987** - Pre-existing Use Permit #22 was approved allowing an expansion of the grocery store.

**1979** - The zoning was changed from G-1 to B-2 with the 1979 Zoning Update.

**June 23, 1964** - The zoning was changed to G-1 Planned Commercial District for Clocktower Shopping Center. The center was developed in compliance with the existing regulations prior to the requirement for a use permit.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan designates commercial land uses for this area.

**BACKGROUND:** The subject premises is located within the Clocktower Shopping Center, developed in the late 1960's. The sale of alcohol at the Library Lounge pre-dates when the sale of alcohol was made a conditional use in the B-2, adopted in 2004, and the requirement making the sale of alcohol a special permit in all commercial districts which was adopted in 1994. In the B-2, the sale of alcohol is allowed provided the applicable conditions are met. If operating prior to the adoption of the alcohol provisions and not meeting the requirements they are considered nonconforming uses. In the B-2, doors must be more than 100' from a residential district, and more than 150' away if the door opens onto the residential district. In this case, the west door faces the R-4 and is approximately 64' away, and the south door is approximately 90' away. As a result, this use does not comply with the applicable conditions for the sale of alcohol in the B-2 and is nonconforming. A special permit as required under LMC Section 27.63.280 Expansion of Nonconforming Uses must be approved for the proposed beer garden to be allowed.

This request seeks to expand the licensed premises to include an outdoor beer garden area at the south end of the building. The beer garden, approximately 24' x 60' (1,440 square feet) is proposed to be surrounded by a fence and eliminates six existing parking spaces.

## **ANALYSIS:**

### **1. SPECIAL PERMIT REQUIREMENTS FOR EXPANSION OF NONCONFORMING USES PER LMC 27.63.280.**

#### **(a) Effects on adjacent property, traffic, city utility service needs.**

The Clocktower Shopping Center was developed in the late 1960's, prior to the adjacent homes which were built between 1977 and 1993. The proposed expansion is approximately 63' from the R-4 district to the west, where the shopping center abuts the rear yard of the homes which front onto Kingston Road. The adjacent homes are all two-family, with the exception of a single-family at the intersection of Rexford Drive and Kingston Road.



The nonconforming condition caused by the existing west and south-facing doors being located less than the required distance to the R-4 is not made worse by the proposed expansion. As shown, the proposed fence actually encloses the area surrounding the south door. The applicant notes that if this request is approved, the intent is to expand the lounge into the adjacent tenant bay on the east side of the building, which will provide an access door that faces east and opens into the shopping center.

The proposed expansion consists of a 24' x 60' (1,440 square feet) outdoor beer garden attached to the south end of the building. It removes six parking spaces, and relocates the existing sidewalk from the south edge of the building to the south end of the beer garden. Public Works notes that the beer garden does not provide adequate sight distance as shown on the site plan. It projects too far south for cars in the parking lot drive aisles to see the east-west traffic entering and leaving the center. Public Works notes that the dimensions of the addition must be reduced to approximately 24' x 40' while remaining centered on the building to provide for safe traffic flow. A revised site plan must be approved by them to confirm adequate sight distance.

**(b) Density of land use zoning for the subject property and adjacent property.**

This site is zoned B-2, and off-street parking must be provided at the ratio of 1 space per 300 square feet of floor area, except for restaurants which are one space per 100 square feet. Based upon the existing uses in the shopping center, the Building and Safety Department has confirmed there are 97 excess parking spaces. After removing six and creating the requirement for 15 more (based upon floor area) there are 76 excess stalls remaining.

**©) The degree of hardship upon the applicant which would be caused by failure to grant such a permit.**

The Library Lounge as it exists can continue to operate regardless of whether this application is approved or not. Additionally, denial of this request does not prohibit the construction and use of the outdoor seating area for smoking or dining, but only prohibits the sale or consumption of alcoholic beverages. The applicant states that this request is in response to the indoor smoking ban, and is an attempt to provide an outdoor area where people can smoke and be served alcohol.

**3. DEPARTMENT RESPONSES:**

**POLICE:** The Police Department had no objection to this request.

**PUBLIC WORKS:** Public Works and Utilities requests the addition be reduced in area to allow for adequate sight distance.

**HEALTH:** As an advisory note, the Health Department recommends that if smoking is allowed in the outdoor patio area, that at least 20% of the area of the total square footage of the walls and ceiling be open to ensure adequate ventilation.

## **CONDITIONS:**

### Site Specific:

1. This approval permits the expansion of the area designated for the sale of alcohol for consumption on the premises as shown on the site plan.

### General:

2. Before receiving building permits:
  - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.
    - 2.1.1 Five copies of a revised site plan showing the following revisions:
      - 2.1.1.1 Reduce the dimensions of the outdoor beer garden to the satisfaction of Public Works and Utilities, with the beer garden remaining centered along the south wall of the existing building.
    - 2.1.2 No outside sound amplification equipment, musical instruments, radios, TV sets (except where sound is mute), or similar devices be permitted in the beer garden. (\*\*As revised by staff on 7/06/05\*\*)
  - 2.2 The construction plans comply with the approved plans.

### Standard:

3. The following conditions are applicable to all requests:
  - 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
  - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner

June 15, 2005

**OWNER:** Richard Agee  
2541 Woodleigh Lane  
Lincoln, NE 68502

**APPLICANT/  
CONTACT:** Cynthia Swanson  
1840 Rusty Lane  
Lincoln, NE  
(402) 450-6850

## SPECIAL PERMIT NO. 05032

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 6, 2005

Members present: Carroll, Carlson, Esseks, Larson and Bills-Strand; Krieser, Pearson, Sunderman and Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted two letters and a petition in opposition. He also submitted revised conditions of approval provided by staff based on comments from the Health Department, including an additional Condition #2.1.2: No outside sound amplification equipment, musical instruments, radios, TV sets (except where sound is mute), or similar devices be permitted in the beer garden. The comments from the Health Department were also submitted.

### Proponents

**1. Cindy Swanson**, owner of The Library Lounge, at 70<sup>th</sup> & A Streets, testified as the applicant. She has applied for this special permit because of the recent smoking ban. Her business has deteriorated by 40% overall from the smoking ban. Her customers are currently going out on the west side of the premises, which abuts the residential area, to smoke and it probably is noisy in the evenings for the residents. She wants to put the beer garden in so that the noise is forced to the south, alleviating a lot of the noise on the west side. She needs this special permit in order to stay in business. She does not serve food and her customers want to smoke when they drink. She has had conversations with Mr. Cottrell, who has submitted a letter in opposition. She has kept her doors closed on Thursday, Friday and Saturday when she has Karaoke; however, this requires her to keep her air conditioner running in the spring and fall. She has tried to cooperate as much as possible. The bar has been in existence for 37 years. It was there before the houses were built. This is her livelihood. She does not know what else to do to counteract the smoking ban.

Larson confirmed that it is now illegal for the patrons to take their drinks outside with them to smoke. Swanson concurred.

### Opposition

**1. Paul Berggren**, 7420 Lambert Place, read a statement into the record from Mr. Cottrell, who owns three properties along Kingston across the alley from the Library Lounge. Cottrell has lived on Kingston for 20 years and viewed The Library Lounge as a quiet neighbor that served food and beverages. Over the years, it has evolved into a cocktail lounge with liquor sales, live music and younger audiences, with an increasingly amount of traffic and customer noise until 2:00 a.m. The human context of the request is important. The Library Lounge is already nonconforming for the sale of on-site alcohol by the separation from residential property. The current distance is 64' and

90' from the bar doors to the residential property, which already makes the relationship between the bar and family dwellings a challenge. This type of establishment would not be allowed if of new construction today.

Cottrell disagrees with the staff analysis. The neighbors will have to endure increased traffic congestion, increased traffic noise in the alley and bar area and increased customer noise outside the bar. This is a quality of life issue. To allow the addition of a beer garden that serves alcohol would ignore the obvious fact that it is already nonconforming and would be made worse by the proposed expansion. The owner of the lounge supplied pictures of the proposed expansion but the photos submitted by the opposition supply the missing perspective. It is already an inappropriate proximity and will be made worse by this proposal. This proposal will have a negative impact on the family dwellings in the immediate area and their quality of life.

The proposed beer garden will be 64' from the residence on Rexford Drive. Even though the west side of the lounge may be abated by putting the beer garden to the south, it would still have an exposure to the immediate neighbors.

**2. Norman Otto**, 1500 Kingston Road, which is directly across the street, testified in opposition. His bedroom window is to the north and at 2:00 a.m. he is awakened with traffic that is still in the bar area. If the expansion is allowed, he suggested that the proper thing to do would be to acquire the empty space directly east of the bar into the shopping area instead of getting closer to the residential area.

**3. Jim Otto**, 6903 Rexford Drive, testified in opposition; however, he stated that he empathizes with both sides. He would rather not have the lounge expand, but he also agrees that the logical thing would be to expand to the east with most of the noise going out to 70<sup>th</sup> Street. In fairness to the Library Lounge, Otto agreed that the owner has tried to cooperate with the neighborhood, but there has been much more noise since the smoking ban because people are forced to walk outside to have a cigarette. This special permit is going to increase that activity because they will be able to carry their drink outside. Otto suggested that the Planning Department is supporting the expansion to the south because it is an alleviation to the nonconforming use. It may help based on the letter of the law, but it may make things worse based on the intent of the law. If you put it on the south side, you are simply asking for confrontation. If it is on the east side, it would mean that everyone is trying to get along. He measured the distance from where it is proposed to go to the actual curb. It is approximately 52' if located on the south. It would be more than 100' if located on the east side.

### Staff questions

Carroll noted that there is a 6' sidewalk on the south side. Is it best to come out of the building and going to the enclosed area on that sidewalk? Brian Will of Planning staff advised that the applicant has been told that if they move the parking spaces, the sidewalk will have to be re-routed but should remain. The enclosure will go right up to the building.

Carlson suggested that they could build a structure for the smoking area without a special permit if alcohol were not permitted to be taken outside. Building & Safety would need to issue a building permit. This is a request to allow the patrons to take the alcohol outside.

With regard to building to the east, Will advised that the staff did suggest that alternative to the applicant in the review process. The applicant or owner were not agreeable to that alternative.

Carroll wondered whether the loss of the parking stalls is a problem. Will stated that the ordinance requires a certain amount of parking. Building & Safety tracks the uses and floor area and amount of parking required. There is excess parking based upon the uses of the center at this time and they can remove the parking spaces.

#### Response by the Applicant

Swanson stated that the reason the beer garden was not designed to be on the east side of the building is because the shopping center owner is not interested in locating it there. If it were on the east side, it would be in the middle of the joint parking lot in the middle of the complex. As far as the noise, she believes the noise will be cut down with it being on the south. Without any music or radio, etc., there will not be bands or anything else to make it noisier. At least with the enclosure, the patrons are controlled and the fence will help alleviate some of the noise and debris problems.

Swanson confirmed that she has been the owner for eight years at this location, but the bar has been there for 36 years. The houses came after the bar so that is why it is grandfathered.

#### **ACTION BY PLANNING COMMISSION:**

July 6, 2005

Carlson moved to deny, seconded by Larson.

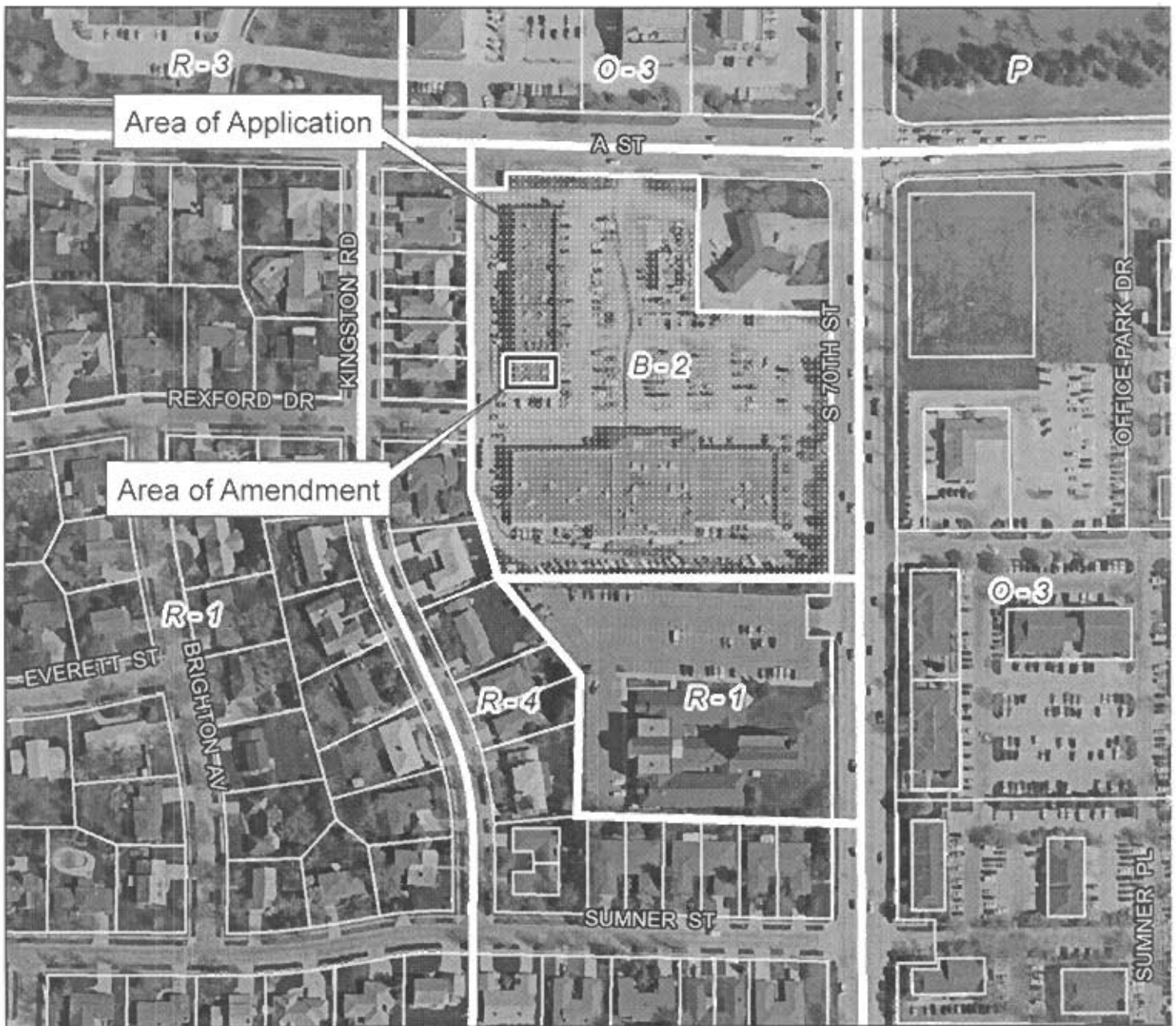
Carlson does not believe this is a smoking issue. If people wander outside to have a cigarette, the applicant could control that by having this same size structure for smoking and not drinking. This is about whether we want to change the rule to let people go outside with their alcohol. He agrees that this is a nonconforming use. The use of the building seems to have evolved over time. The question is not whether it is nonconforming and should be here – it is already there. The question is whether we want to expand it and now have alcohol outside. He does not think it is right to create an additional opportunity to go outside with the drink and stay outside.

Esseks commented that he is sympathetic to the owner because of the smoking ban. To him a reasonable compromise is to put the beer garden to the east. It is upsetting that the landlord does not see that and he is hoping that if this is denied, the landlord will see that and find it necessary to keep the valuable patron by allowing the expansion to the east.

Bills-Strand agreed with Esseks.

Motion to deny carried 5-0: Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman, and Taylor absent. This is final action, unless appealed to the City Council.

**(Editorial note: The applicant filed a letter of appeal with the City Clerk on July 6, 2005, and the public hearing before the City Council is tentatively scheduled for Monday, July 25, 2005, at 5:30 p.m.)**



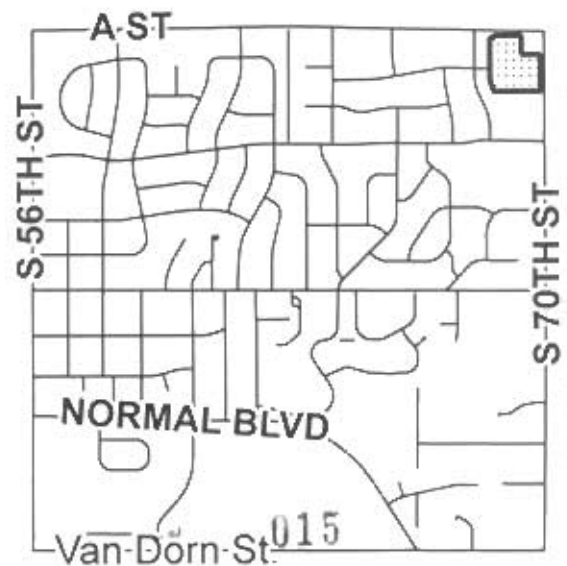
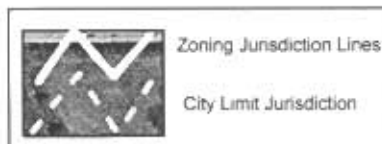
2002 aerial

## Special Permit #05032 S. 70th & A St.

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 33 T10N R7E



## OWNERSHIP CERTIFICATE

**FILE NO:** 6022892

**TO:** Sara Hartzell  
Planning Department

Nebraska Title Company, authorized to engage in the business of abstracting in the State of Nebraska under Certificate of Authority No. 56, hereby certifies that the records of LANCASTER County, Nebraska have been carefully examined with referenced to the following described property, and from such examination finds as follows:

**LEGAL DESCRIPTION:**

Lot Four (4), except the North 190 feet of the East 190 feet thereof, Block One (1),  
Huntington First Addition, Lincoln, Lancaster County, Nebraska

Address: 6891 A St, Lincoln, NE 68510

**OWNER OF RECORD:**

Richard W. Agee, Trustee of the Richard W. Agee Restated, Amended and Substituted Revocable Trust dated September 18, 2001; and Eloise R. Agee and Richard W Agee, Trustees of the Eloise R. Agee Restated, Amended and Substituted Revocable Trust dated September 18, 2001; SUBJECT TO Leasehold rights of CTC, Inc.

**Effective Date:** June 6, 2005 at 8:00 am

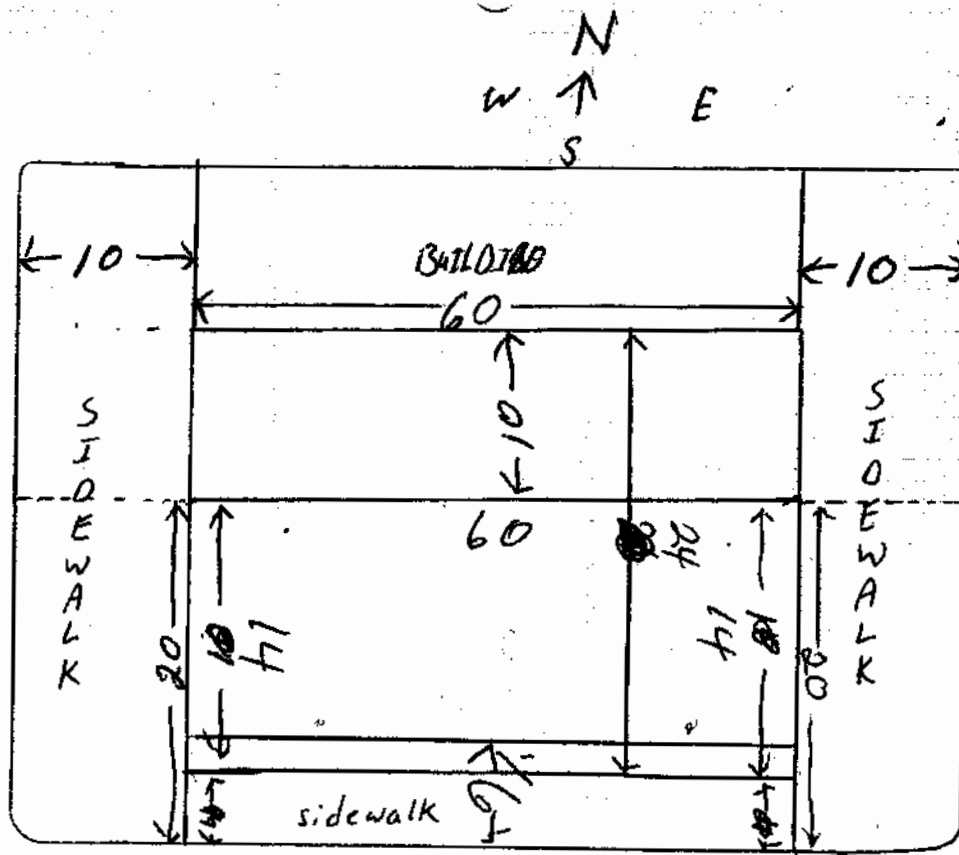
Nebraska Title Company

By:   
Vice-President  
Registered Abstracter

Please direct inquiries to: Joan Journey

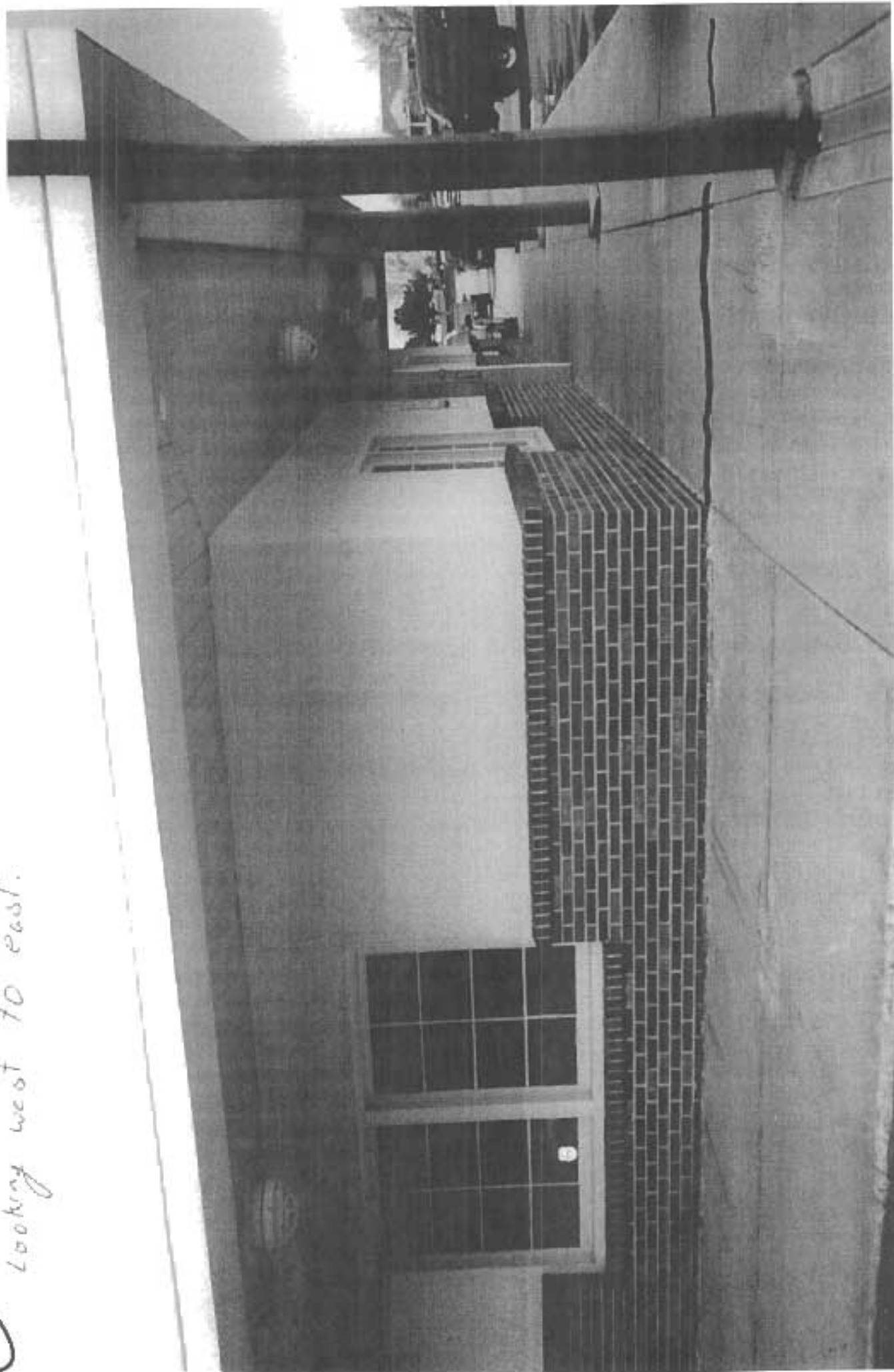






1500  
24  
144  
1440-8

① Area of proposed expansion. View of southwest corner of bldg.  
Looking west to east.



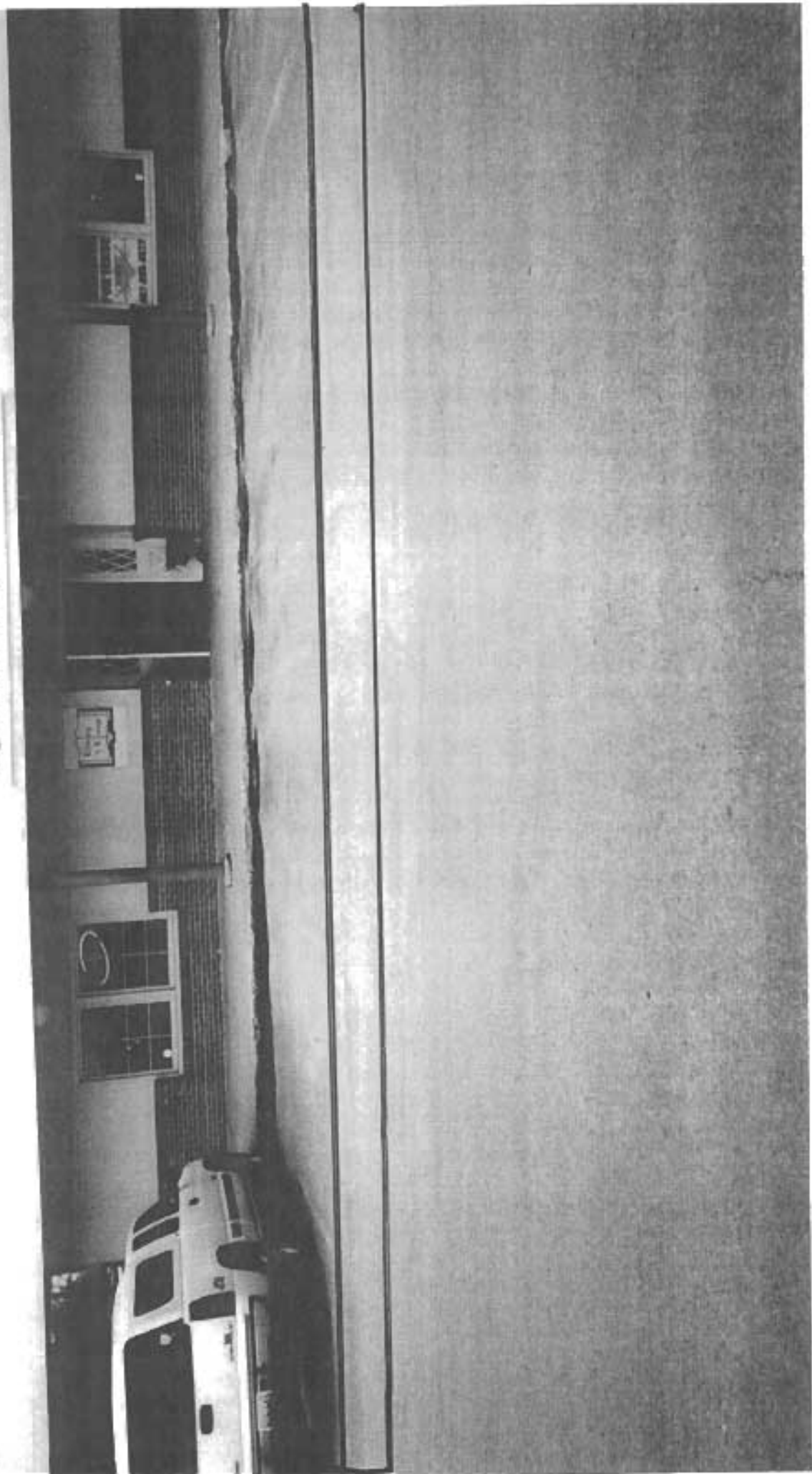
② Area of proposed expansion. View of south side of oldy looking north.



(B.)

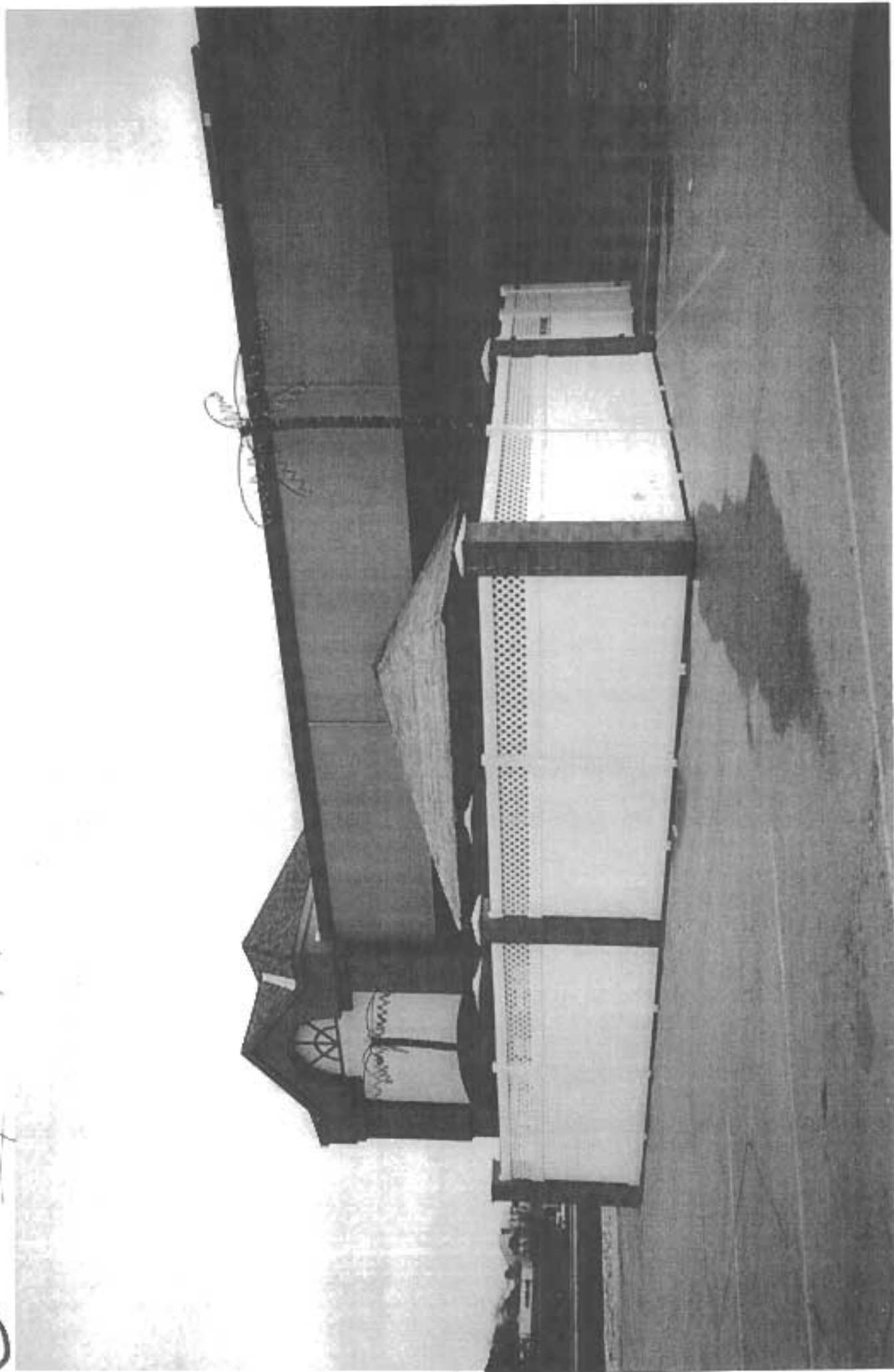
Area of proposed expansion view of south side of Bldg. looking north.

## Library Lounge



(14)

Example of proposed structure



June 7, 2005

City of Lincoln  
Planning Commission  
555 So. 10<sup>th</sup> Street  
Lincoln, NE 68508

**Purpose of Application**

This application is to allow for the construction of an outside seating area on the south side of the existing building currently housing the Library Lounge in the Clocktower Shopping Plaza at 70<sup>th</sup> and A Streets. The Library Lounge is a cocktail lounge which serves alcohol in the form of wine, beer, and liquor. The Lounge currently occupies 2,300 square feet on the west side of Section 6, Building B. If the outside seating area is approved, the Lounge would expand to include another 1,800 square feet on the east side of Section 6, Building B.

The site plan for the shopping plaza is attached along with a separate drawing of the proposed outside seating area. The proposed area would provide 1,440 square feet of outside seating space on the south end of building B and would eliminate the seven parking spaces currently located on that end of the building. Also attached are three pictures of the south end of the building where the proposed seating area would be constructed and a fourth picture showing a structure comparable to what I am proposing.

This permit is being requested to allow smoking customers an area to smoke and drink alcoholic beverages since the Lincoln smoking ban which went into effect January 1, 2005 does not allow smoking indoors.

Cynthia J. Swanson  
Proprietor  
Library Lounge

# Memorandum

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**To:** Brian Will, Planning Department

**From:** Charles W. Baker, Public Works and Utilities

**Subject:** Clocktower Special Permit #05032 and Administrative Amendment to Use Permit #22D

**Date:** June 14, 2005

**cc:** Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan for the proposed smoking room addition to the Library Lounge located on the south end of the existing building in the Clocktower Center at 70th and "A" Streets. Public Works has the following comments:

- The site plan as submitted for the building extension does not allow adequate sight distance for vehicle and pedestrian traffic from the adjacent drive aisles of the parking lots. It appears that an addition of up to 40' in width, centered on the existing building, might meet the standard. A detailed site plan will be required to be submitted for review.
- Show that the reduction of the proposed 7 parking stalls does not adversely affect the number of required parking stalls for the center.



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## MEMORANDUM

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**TO:** Planning Commission  
**FROM:** Brian Will, Planning Department  
**SUBJECT:** Special Permit #05032 - Library Lounge at 6891 A Street  
**DATE:** 7/6/2005

Attached are revised review comments from the Health Department regarding sound levels associated with this use. In their review, the Health Department notes that the use is subject to the noise limits established by LMC chapter 8.24. Additionally, the conditions of approval have been revised to include a condition that no outside sound amplification equipment, musical instruments, radios, TV sets (except where sound is mute), or similar devices be permitted in the beer garden.

The revised conditions of approval to include this condition are as follows:

**CONDITIONS:**

**Site Specific:**

1. This approval permits the expansion of the area designated for the sale of alcohol for consumption on the premises as shown on the site plan.

**General:**

2. Before receiving building permits:
  - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.
    - 2.1.1 Five copies of a revised site plan showing the following revisions:
      - 2.1.1.1 Reduce the dimensions of the outdoor beer garden to the satisfaction of Public Works and Utilities, with the beer garden remaining centered along the south wall of the existing building.

2.1.2

[REDACTED]

- 2.2 The construction plans comply with the approved plans.

**Standard:**

3. The following conditions are applicable to all requests:
  - 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
  - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.

Gary L Walsh/Notes  
07/05/2005 03:48 PM

To Brian J Will/Notes@Notes  
cc Rick L Thorson/Notes@Notes, Chris M  
Schroeder/Notes@Notes  
bcc  
Subject Special Permit #05032, The Application of the Library  
Lounge for a Beer Garden

Brain: After further review of this Application the Health Department believes the following site specific conditions should be part of the conditional approval:

- 1) No sound amplification equipment, musical instruments, radios, TV sets (except where sound is mute), or similar devices shall be permitted in the beer garden; and
- 2) The applicant shall comply with the noise limits of the LMC Chapter 8.24.

Note: The property line noise limits for the beer garden ( at the nearest residential property) where human conversation is the source of noise are 65 dba, 10 minute sound equivalent level(Leq), between 7:00 am and 10:00 pm and 55 dba between 10:00 pm and 7:00 am.

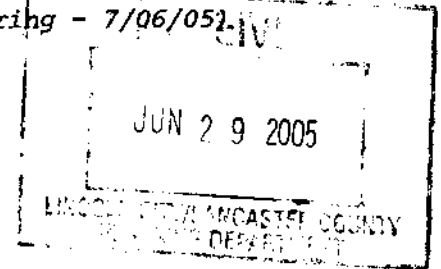
If the south door of the Library Lounge should be left open and the sound of music from inside the Lounge enters the beer garden, then the limits become 60 dba and 50 dba for these respective time periods.

Gary L Walsh/Notes  
07/06/2005 08:54 AM

To bd@softley.com  
cc Rick L Thorson/Notes@Notes, Brian J Will/Notes@Notes  
bcc

Subject Noise Reading for the Library Lounge

Mr. Softley: A sound equivalent (Leq) reading of 47.5 dba during a 10 minute period was obtained during the period 10:45 pm until 11:00 pm on Tuesday night, July 5, 2005. The measurement site was approximately 60 feet west of the southwest corner of the Library Lounge. This site is between the stop sign and tree on the west side of the driveway that runs along the west side of the Library Lounge. I heard no noise coming from the Lounge. The noise measured was background noise primarily associated with traffic on 70th Street and on "A" Street. There was also a small contribution from the sound of distant fireworks. The noise limit for a residential area during the period 10:00 pm until 7:00 am is 55 dba measured over a 10 minute period. If the Planning Commission decides to approve the request for a beer garden at this location, the Health Department would ask that a condition be added to the permit prohibiting any type of sound amplification equipment, musical instruments, TV sets (except with sound muted), or similar devices in this area. Additionally, the Library Lounge would have to comply with all applicable requirements of the Lincoln Municipal Code, Chapter 8.24, which is the City Noise Ordinance. If you have any questions, you can contact me at 441-8039. I will be attending today's Planning Commission meeting. My supervisor is Rick Thorson, 441-6236, if you would like to discuss the beer garden issue with him.



June 27, 2005

Lincoln-Lancaster County  
Planning Commission  
555 South 10<sup>th</sup> Street - Suite 213  
Lincoln, NE 68508

**RE: Denial of Special Permit No. 05032**

Dear Commission Members:

I would like to share some insights with you relative to Special Permit No. 05032, which includes a request to expand the Library Lounge at the Clocktower Shopping Center near to 70<sup>th</sup> & A Streets.

I have been a property owner at 1412 Kingston Road since December 1983. I now own the properties to the South of our residence, including 1420 Kingston Road and 1422 Kingston Road. My wife and I own three properties along this block which encompasses twin homes. We have recently sold the townhome at 1410 Kingston Road.

During the past twenty-one years, we have consistently witnessed a deterioration of the neighborhood as a result of people frequenting the Library Lounge. We have made frequent complaints to the owners of the lounge with limited success in controlling the situation.

Twenty-one years ago when we first occupied the property, the Library Lounge was simply a small local place where people from the neighborhood could socialize and return home. The lounge frequently closed by 11 p.m. It was no detriment to the community. During this two-decade period of time, however, the bar has become an increasingly active hang-out for young people who do not live in the neighborhood, but find the bar a place to come together to socialize, interact, and, in many cases, drink excessively. The entire clientele frequenting the bar has changed radically and with it have come many deteriorating conditions.

As a result of the deterioration, we have loud noise to as late as 3 a.m. The noise comes from loud talking as well as outside fights between clientele. It also includes very loud noise from motorcycles, trucks, and automobiles. Needless to say, many nights it is very difficult to get any rest.

The outside of the lounge is only fifty-five feet from our property line at 1422 Kingston Road. This road is used extensively by patrons which increases the noise factors radically from motorcycles, automobiles, and trucks. As a result of people wandering around in the area West of the lounge, we have the constant challenge of picking up trash, including beer cans and bottles left on our property.

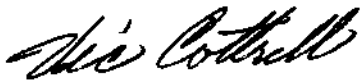
We have, on numerous occasions, called police to intervene. Most recently, less than two months ago, there was a major fight that required police intervention. Even the owner of the lounge was unable to bring peace in that situation. At that time, a bench outside the bar was totally destroyed. Prior to this occurrence, I had visited with the owner of the lounge to forwarn her that providing seating capacity outside of the bar was a disaster-in-the-making.

I am referring quite extensively to past conditions as a basis for what could occur in the future. If we were to have an expanded lounge, coupled with opportunities for people to sit and gather outside of the lounge, conditions would be created that would be even more difficult than what we are currently struggling with.

My understanding is that the distance between this bar and private dwelling property is far closer than present ordinances allow. My understanding is that the reason the lounge can continue to exist in this area is because it was grandfathered, based on a much earlier ordinance. To expand the bar would become an increasing infringement on our property.

Thank you for your consideration relative to this information. I will be able to provide you much more detailed information upon request.

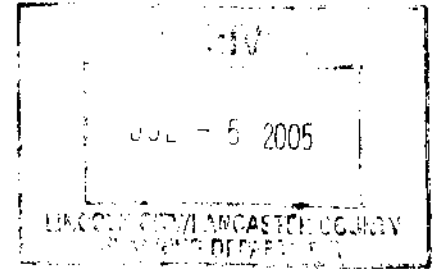
Sincerely,



Vic Cottrell  
1412 Kingston Road  
Lincoln, NE 68506  
402 483 2844

June 30, 2005

Lincoln City/Lancaster County Planning Commission  
Attn: Brian Will, Project Planner  
Re: Special Permit No. 05032  
555 South 10<sup>th</sup> Street  
Suite 213  
Lincoln, NE 68508



Dear Mr. Will,

We are writing in opposition to SPECIAL PERMIT NO. 05032 for expansion of a non-conforming use of the alcohol on the premises, on a property generally located at 70<sup>th</sup> & A Sts, occupied by the Library Lounge.

We are opposed to the proposal to add an outdoor seating area at the south end of the present Library Lounge location for the following reasons:

- The increased noise level would be an encroachment upon the nearby by residences, some as close as 80 feet away.
- The outside area will be plainly visible from our front yard and our second story bedroom window.
- Loss of the current parking spaces could result in customer parking overflowing into the adjacent neighborhood.


We also feel an unsafe situation would be created as a privacy fence would be the only barrier separating patrons from the regular traffic flow.

The expansion and the accompanying negative aspects would have an adverse effect on the neighborhood, making it less desirable and eroding market values. After all, would you want to purchase a house with a beer garden in its back yard?

Thank you for listening to our concerns regarding this special permit request. I invite you to visit our wonderful neighborhood and see first hand the negative effects granting this request would bring.

If you have any questions or need any additional information, please do not hesitate to contact us at the address or phone number shown below.

Sincerely,

  
Jerry E and Connie J Barnett  
6820 Rexford Dr  
Lincoln, NE 68506  
488-9217 (home)  
429-1093 (Jerry's cell)

July 5, 2005

Lincoln-Lancaster County  
Planning Commission  
555 South 10<sup>th</sup> Street - Suite 213  
Lincoln, NE 68508

**RE: Opposition to Special Permit No. 05032**

Dear Commission Members:

Enclosed please find additional information regarding the viewpoints of homeowners in the area of the Library Lounge. As you can see from the photographs, the proposed beer garden would simply be too close to the residential area.

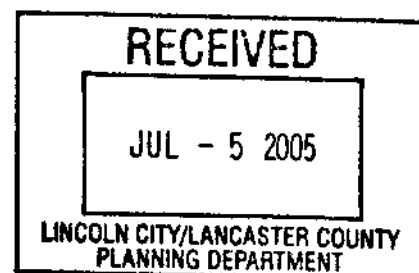
We will provide you more details about this situation upon request.

Sincerely,



Vic Cottrell  
1412 Kingston Road  
Lincoln, NE 68506  
Phone: 483 6784  
Cell: 770 9314

Enclosures

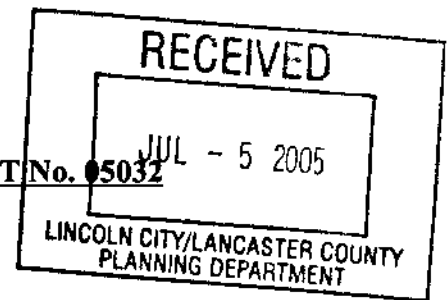




June 27, 2005

Lincoln-Lancaster County  
Planning Commission  
555 South 10<sup>th</sup> Street - Suite 213  
Lincoln, NE 68508

RE: SPECIAL PERMIT No. 05032



Dear Commission Members:

We wish to respond to the request for Special Permit No. 05032 to expand the Library Lounge at Clocktower Shopping Center near 70<sup>th</sup> and A Streets.

It is our collective judgment that the expansion of the Library Lounge would be a significant disadvantage to the neighborhood. Even in its' current state, people are around the bar as late as 3:00 a.m. Two a.m. is very common. When liquor can no longer be served at 1:00 a.m., the patrons stay around for extended periods of time and often go out on to the sidewalk and nearby road.

Another challenge is that cars, motorcycles, trucks, and other vehicles constantly come and go from the bar up until 2 a.m. This becomes a very significant challenge to the surrounding neighborhood.

The expansion of the Library Lounge would simply bring more unwanted traffic into the neighborhood. In addition, if permission were granted to allow patrons to sit outside to enable them to drink and smoke outside, it would greatly increase the noise factors.

We appreciate your consideration of our request.

Victor A. Bethell  
Name

1412 Kingston Rd.  
Homeowner's Address

Dale S. Otter  
Name

1420 Kingston Rd  
Homeowner's Address

Anne C. Hahn  
Name

6811 Rexford Drive  
Homeowner's Address

Douglas D. Fahn  
Name

6811 Rexford Drive  
Homeowner's Address

Larry V. Rockwell  
Name

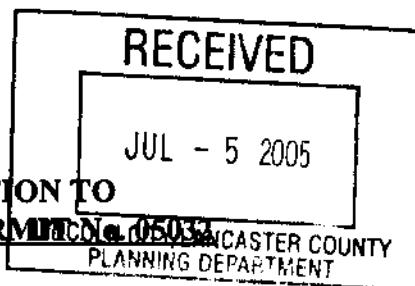
1411 KINGSTON ROAD  
Homeowner's Address

Norman A. Otto  
Name

1500 Kingston Road  
Homeowner's Address

June 27, 2005

Lincoln-Lancaster County  
Planning Commission  
555 South 10<sup>th</sup> Street - Suite 213  
Lincoln, NE 68508



RE: **OPPOSITION TO**  
**SPECIAL PERMIT No. 05032**

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The expansion of the Library Lounge would simply bring more unwanted traffic into the neighborhood. In addition, if permission were granted to allow patrons to sit outside to enable them to drink and smoke outside, it would greatly increase the noise factors.

Neighborhood Homeowners,

Nancy M. Gifford  
Name

1412 Kingston Rd.  
Homeowner's Address

Walter Stenke  
Name

1410 Kingston Rd.  
Homeowner's Address

Sally Stenke  
Name

1410 Kingston Rd.  
Homeowner's Address

\_\_\_\_\_  
Name

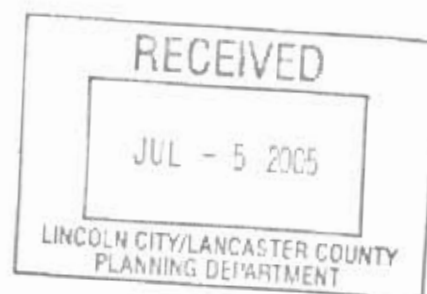
\_\_\_\_\_  
Homeowner's Address

\_\_\_\_\_  
Name

\_\_\_\_\_  
Homeowner's Address

\_\_\_\_\_  
Name

\_\_\_\_\_  
Homeowner's Address



**Opposition to Special Permit No. 05032**  
**Photographs of Site**

- #1. Photograph of the Cottrell and Steinke homes. Both homes back up to the Clock Tower Shopping Center.
- #2. Photograph of the Cottrell property at 1422 Kingston Road.
- #3. Photograph shows how close the proposed beer garden is to the Cottrell property at 1422 Kingston Road.
- #4. Photograph showing the back side of the Cottrell property at 1422 Kingston Road (left side). The alley is the only thing separating the property from the Library Lounge. This road has bar traffic all night, up until 3:00 A.M.
- #5. Photograph taken from the Otto home showing the proposed site of the beer garden on the south side of the Library Lounge.
- #6. Photograph showing how close the edge of the proposed beer garden would be to the Otto home. There is 75 feet extending from the proposed beer garden to the Otto property.

